749.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1849.—No. ~~114~~. 22.

JOSHUA KENNEDY'S EXECUTORS, APPELLANTS,

vs.

SIDNEY E. COLLINS.

UNITED STATES OF AMERICA,
Southern district of Alabama:

Circuit court of the United States, for the fifth judicial circuit and district aforesaid—December term, 1849.

SIDNEY E. COLLINS
vs.
HALLETT & WALKER, executors, et al. } In chancery.

A motion was made on the part of the plaintiff to establish the deposition of Wm. Moore, a witness in the cause, which was taken by the plaintiff and used upon the hearing of the case, and that said deposition has been lost, and was so before the cause was removed to the Supreme Court of the U. S. And thereupon came John A. Campbell, Dan'l Chandler, and Wm. C. Easton, and filed the abstracts of the testimony made by the said Campbell, Chandler, and George N. Stewart, on the hearing of the cause; and the said Campbell and Chandler say, that the abstracts made by them contain all that was material in said testimony within their recollection. Whereupon the court orders, that the three statements of the evidence of the said William Moore, as made by said parties, be recorded on the minutes as the best secondary evidence of the said deposition that can be found, it appearing to the court that diligent search has been made for the said deposition, and that the same is lost. It further appearing that said abstracts were made by parties engaged in the cause, and to aid in the same on the trial, and that the same is unaltered. It further appears that notice of this motion was given to the defendant's counsel, and that he was in court at the time when this order was made.

Dan'l Chandler's abstract on Wm. Moore's deposition.

"Joshua Kennedy was in treaty to purchase their (Collins') claim. He applied to witness more than once to assist him. He said he was a friend to the father of the boys, and his kindness for him induced him to offer more than the land was worth. He said his claim was superior

to theirs, and treated that of George and Sidney as flimsey. He was anxious however to get it. Collins lived with witness. J. Kennedy tried to purchase their claim; tried to get witness to assist him; price was inadequate. Jos. Kennedy pretended the claim of the Collins was of no account, but manifested great anxiety to get it."

John A. Campbell's abstract on Wm. Moore's deposition.

"Wm. E. Moore testifies that Sydney E. Collins was an apprentice to him in 1830, and that, while there, Joshua Kennedy made the purchase of him, Sidney. He testifies that he disparaged the title of the Collins, and asserted that his own was best; that he gave no explanation of his title, and represented that he purchased from friendship to their father."

George N. Stewart's abstract on Wm. Moore's deposition."

"George was a year or two older than Sydney. J. Kennedy applied to him to assist him. He said he had better title, and Collin's not good. Gave note for payment."

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the foregoing order establishing the deposition of Wm. Moore, in the case before mentioned, as entered third of January, A. D. 1850, is truly copied from the minutes of said court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at [my] office in Mobile, this twentieth day of February, A. D. 1850.

[SEAL.]

JOHN FITTS, *Clerk.*

We agree that this shall be filed as a part of the record of the case mentioned herein in the Supreme Court of the United States, and stand in lieu of the deposition of the witness, Wm. Moore. We also agree that the papers in the case of Doe ex dem. of Hunt, Hagan et al., vs. Hallett and Walker, relating to the Price claim on file in that court, may be referred to in this cause, that title having been produced in the circuit court upon the trial of this cause. We agree that Brown's map of locations in the land office may be referred to, for the evidence of location of any of the grants mentioned in this cause.

CAMPBELL & CHANDLER, *for Plff.*
STEWART & EASTON, *for Def'ts.*